

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 4678 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH****HONOURABLE MR.JUSTICE AKIL KURESHI**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

=====

HARSHVARDHAN B PATEL - Appellant(s)**Versus****VITTHALBHAI A PATEL & 3 - Defendant(s)**

=====

Appearance :

MR MTM HAKIM for Appellant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 1 - 2.
MR PV NANAVATI for Defendant(s) : 2,
MR VIBHUTI NANAVATI for Defendant(s) : 2,
None for Defendant(s) : 3 - 4.

=====

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**and****HONOURABLE MR.JUSTICE AKIL KURESHI****Date : 11/01/2007****ORAL JUDGMENT**

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgement and award dated 30th September, 2004 passed by the Motor Accident Claims Tribunal (Aux.), FTC, Bharuch in M.A.C.P. No. 687/1996 preferred under Section 163A of the said Act, for enhancement of compensation amount on account of the injuries sustained by the appellant claimant in a motor vehicle accident resulting into permanent partial disablement.

2.The appellant was at the relevant time employed as a driver of the Jeep insured by the respondent no.2- United India Insurance Co. When the appellant was driving the Jeep from Jambusar to Navagam, Rajkot, a truck insured by respondent no.4- the Oriental Insurance Co. was proceeding in the same direction ahead of the Jeep. Driver of the truck suddenly applied the brake and the appellant also applied the brake to stop the Jeep. In the process, the Jeep dashed with the truck on the rear side and the appellant sustained serious injuries. The appellant was taken to the Civil Hospital at Chotila and thereafter, to the Civil Hospital at Rajkot where he was admitted as an indoor patient. Plaster was applied on his right leg from knee to foot and also on his left hand from elbow to wrist. The appellant thereafter, took

treatment from Dr. A.C. Shah (M.S. Ortho), Vadodara where the appellant was admitted as an indoor patient for 28 days.

3. The appellant therefore, filed the claim petition under Section 163A of the Act for compensation of Rs. 2,00,000/-. The appellant's case before the Tribunal was that the appellant was employed as a driver earning Rs.2,200/- per month but after the accident, the appellant cannot do any work on account of permanent disablement. The appellant cannot work without crutches, cannot sit cross legged, cannot bend his fist and on account of all these disablements, the appellant cannot drive any vehicle. The appellant produced a Certificate issued by Orthopedic Surgeon at mark 15/5 certifying that the appellant has suffered disablement of 10% of right lower limb and 15% of left upper limb.
4. It appears that during the pendency of the claim petition, the owner of the truck and insurer of the truck i.e. respondent no.3 and 4 herein were deleted and the claim petition was prosecuted only against the owner and insurer of the Jeep.
5. Respondent no.2(insurer of the Jeep) contested the claim petition on the ground that the appellant himself was a tortfeasor and therefore, the claim petition under section 163A

was not maintainable. It was also contended on behalf of respondent no.2 insurance company at the hearing of the claim petition that the injuries suffered by the appellant did not fall in Schedule-I to the Workmen's Compensation Act, 1923 and therefore, the claim petition under Section 163A was not at all maintainable for the purpose of claiming compensation for loss of earning capacity.

6. The Tribunal accepted the appellant's case that the appellant had sustained injuries as recorded in the Certificate at mark 15/5 on account of the accident involving use of Jeep bearing registration No. GJ-16-C-2036, insured by respondent no.2-United India Insurance Co. However, the Tribunal thereafter held that the disablements suffered by the appellant did not fall within Schedule-I of the Workmen's compensation Act and therefore, purporting to rely on Clause-5 of the Second Schedule to the M.V. Act 1988, the Tribunal held that the appellant was not entitled to get any compensation for loss of earning capacity.

7. The Tribunal, awarded compensation only under the following heads :

Rs.4500/-	Actual loss of past income (Rs.1500x 3months)
Rs.5000/-	For pain, shock and suffering
Rs.15,000/-	For medical expenses

Rs.24,500/- total compensation

The appellant had produced medical bills for expenses incurred to the extent of Rs. 16,500/- but on account of the upper limit of Rs. 15,000/- fixed by the Legislature, the Tribunal restricted the assessment under the said head to Rs. 15,000/-.

8. Aggrieved by the above judgement and award, the original claimant has preferred this appeal.

9. Mr. Hakim, learned Counsel appearing for the appellant claimant has submitted that the Tribunal has seriously erred in law in narrowing the scope and ambit of the provisions of Section 163A, only to the injuries and disablements covered by Schedule-I to the Workmen's Compensation Act, 1923 and in excluding all other injuries resulting into permanent disablement. It is submitted that when Sub-section(1) of Section 163A confers a right on the claimant to get compensation in case of permanent disablement due to accident arising out of the use of motor vehicle and explanation to Sub-section(1) provides that permanent disability shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 and when the definition of permanent disability in Workmen's Compensation Act is wide enough to include any disablement of a permanent

nature, where such disablement reduces the claimant's earning capacity, in every employment which he was capable of undertaking at that time, the claimant's claim for compensation for loss of earning capacity cannot be defeated on the ground that the disablement in question does not fall in Schedule-I to the Workmen's Compensation Act.

10. On the other hand Mr. P.V. Nanavati, learned Counsel appearing for respondent no.2 insurance company has supported the judgement under appeal and has submitted that Clause-5 in the Second Schedule to the Motor Vehicles Act clearly provides that injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923 and, therefore, the Legislature intended to exclude all disablements not falling in Schedule-I to the Workmen's Compensation Act, from the purview of the claim petitions under section 163A of the Motor Vehicles Act.

11. Before dealing with the rival submissions, it would be necessary to refer to the relevant statutory provisions.

11.1 Section 163A of the Motor Vehicles Act reads as follows :

“163A. Special provisions as to payment of compensation on structured formula basis:- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation :- For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen's Compensation Act, 1923(8 of 1923).

(emphasis supplied)

11.2 In Workmen's Compensation Act, 1923, Section 2 defines partial disablement and total disablement.

“2(g) “partial disablement” means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that

time; provided that every injury specified (in Part II of Schedule I) shall be deemed to result in permanent partial disablement.

2(l)-"total disablement"

(emphasis supplied)

Section 3 provides for Employer's liability for compensation, if personal injury is caused to a workman by accident arising out of and in the course of his employment.

Section 4 provides for payment of the amount of compensation in the following categories of cases :

"(a) Where death results from the injury.....

(b) Where permanent total disablement results from the injury.....

(c) Where permanent partial disablement results from the injury

(i) in the case of an injury specified in Part II of Schedule I,.....

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified

medical
practitioner)
permanently
caused by the
injury;

Explanation I-

Explanation II- In assessing the loss of earning capacity for the purposes of sub-clause(ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d)Where temporary disablement"

11.3 The Second Schedule to the Motor Vehicles Act, 1988 contains structured formula to award compensation in third party fatal accident/injury claims cases with the following notes :

"1 to 3 (for fatal cases)

4.General damages in case of injuries and Disabilities....

5.Disability in non-fatal accidents:

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents.

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following :-

(a)In case of permanent total disablement...or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a)

above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."

6. Notional Income for compensation to those who had no income prior to accident:-

Fatal and disability in non-fatal accidents

In case of other injuries only "general damage" as applicable"

(emphasis supplied)

12. On an analysis of the above provisions, the following principles emerge :

(i) Sub-section(1) of Section 163A clearly provides that a person suffering permanent disablement due to accident arising out of use of motor vehicle, is entitled to get compensation from the owner of the vehicle/the authorised insurer. For the purpose of this Sub-section permanent disability has the same meaning and extent as in Workmen's Compensation Act.

(ii) The definition of permanent partial disablement in workmen's compensation Act is wide enough to cover any disablement of a permanent nature which reduces the workmen's earning capacity in every employment which he

was capable of undertaking at that time.(Sec 2(g)). Whenever the Parliament intended to restrict the applicability of such wide definition, it has done so as in Section 140 read with Section 142 to the Motor Vehicles Act, 1988.

(iii)Workmen's Compensation Act provides for the employer's liability to pay compensation to his workman for any personal injury resulting into disablement, whether permanent or temporary, whether total or partial and whether the injury falls in Schedule I or not.

(iv)Proviso to clause(g) in Section 2 of the Workmen's Compensation Act read with the entries in Schedule I to the said Act does not restrict or curtail the scope of substantive part of the definition of permanent partial disablement. It only provides for deeming fiction to avoid any debate in respect of injuries falling in Schedule I to the Workmen's Compensation Act. The object of inserting the proviso in the definition of permanent partial disablement is to provide certainty and uniformity in the assessment of percentage of loss of earning capacity of a workman who has suffered serious injuries like amputation of hand or leg or any other part of the body and, therefore, to avoid delay in assessment and payment of compensation to the injured workman. In fact, where the

injured claimant is able to show that he has suffered an injury falling in Schedule I by merely appearing before the Workmen's Compensation Commissioner/ Tribunal and showing the physical injury/ amputation, the Commissioner/Tribunal would be required to assess the loss of earning capacity by simply looking at the relevant entry in Schedule I to the Workmen's Compensation Act, without requiring the claimant to produce any medical evidence. Thus the claimant would not be subjected to any unnecessary expenses for or delay in obtaining and producing medical evidence.

(v) It, therefore, stands to reason that where the injury is not covered by Part II or Part I of Schedule to the Workmen's Compensation Act, it is still open to the claimant to show his disablement and the consequent loss of earning capacity by producing the medical evidence i.e. the certificate/testimony of a registered medical practitioner. The proviso to Sec.2(g) was not inserted to enable the employer to disclaim his liability to pay compensation to his workman merely on the ground that the injury resulting into permanent disablement did not fall in Schedule-I to Workmen's Compensation Act.

(vi) For the same reasons, the owner/insurer of the

vehicle cannot disclaim his/its liability to pay compensation for permanent total disablement under Sub-section (1) of Section 163A of the Motor Vehicles Act on the ground that the injury resulting into permanent total disablement does not fall in Part I of Schedule I to the Workmen's Compensation Act. (Sec. 2(1) of Workmen's Compensation Act)

(vii) Where such disablement is covered by Schedule I of Workmen's Compensation Act, the Tribunal has to adopt the percentage of loss of earning capacity as indicated in the First Schedule. In cases where permanent disablement does not fall in the said Schedule, the Tribunal will award such percentage of compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by a qualified medical practitioner). In assessing the loss of earning capacity for this purpose, the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries as specified and referred to in Schedule I. In other words, percentages of loss of earning capacity in relation to different categories specified in Schedule I are to be treated as a yardstick even while assessing the percentage of loss of earning capacity in relation to injuries not falling in Schedule-I.

(viii) It is only where the person sustaining injuries in an accident does not suffer from any permanent disablement (total or partial) or death, that he would be paid only general damages. But in all cases where the person suffers permanent disablement (total or partial) due to accident arising out of use of a motor vehicle, he will be entitled to get compensation for future loss of earning capacity in accordance with the structured formula contained in Second Schedule to the Motor Vehicles Act, depending on his income on the date of accident and the extent of loss of his earning capacity.

13. In view of the above principles clearly emerging from a conjoint reading and analysis of the statutory provisions of Motor Vehicles Act, 1988 read with the provisions of the Workmen's Compensation Act, 1923, we find that the Tribunal erred in not considering the appellant's case for compensation towards loss of earning capacity. We may also refer to one particular reason given by the Tribunal for arriving at the conclusion that as per the Second Schedule to the M.V. Act, in cases of other injuries not falling in Schedule I to the Workmen's Compensation Act, only general damages are to be given and not special damages.

Second Schedule refers to following

categories of injuries :

- (i) Permanent total disablement
- (ii) Permanent partial disablement
- (iii) Other injuries not resulting into any permanent disablement.

It is only in the third category of cases that Legislature has provided for only general damages under Section 163A and no special damages like compensation for loss of future earning capacity.

14. In view of the above discussion, that part of the judgement of the Tribunal declining to consider the appellant's case for awarding compensation for loss of future earning capacity must be treated as not correctly interpreting the law.
15. Coming to the facts of the case, we find that the Tribunal has referred to the document produced by the appellant on record of the claim petition, particularly, the Certificate at mark 15/5 wherein disablement of the appellant is shown as 10% in the right lower limb and 15% in the left upper limb. Ordinarily, we would have remanded the matter to the Tribunal to decide this question afresh in light of the principles laid down in this judgement. Fortunately, learned advocate for the appellant claimant Mr. Hakim has produced before us the pursis which

was submitted by the learned advocate for the claimant as well as the learned advocate for the insurance company appearing before the Tribunal on 19th April, 2001, wherein the parties had agreed that total compensation of Rs. 72,500/- be awarded under the following heads, on the basis of claimant's income at Rs. 1500/- per month :

Rs.40,500/-	(Rs.1500x12=18,000x18 years =3,24,000/- divided by 12.5%)
Rs.5,000/-	for pain, shock and suffering
Rs.15,000/-	for maximum medical expenses allowable as against the bill of Rs.16,770/-
Rs.12,000/-	for loss of actual income of eight months

Rs.72,500/-	total compensation

16. In view of the above pursis, we have no hesitation in awarding total compensation of Rs. 72,500/- with proportionate costs and interest at the rate of 9% per annum from the date of claim petition till the date respondent no.2 insurance company deposits the amount awarded by this judgement which shall be done within one month from the date of receiving this judgement. The amount deposited earlier shall be adjusted against the amount awarded as per this judgement.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)